

## REMARKS

### Status of Claims

Claims 38-47, and 59-80 remain in this application. Claims 52-58 have been previously cancelled without traverse as the result of an earlier restriction requirement. Applicant retains the right to present claims 52-58 in a divisional application. New Claims 59-80 have been added.

Please cancel claims 1-37 and 48-58.

### Claim Rejection – 35 U.S.C. § 112, ¶ 1

The Examiner has rejected claims 41 and 43 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Examiner contends that the claim limitations “at least one aperture is exactly two apertures” (claim 41) and “at least one aperture is exactly four apertures” (claim 43) are not supported in any detail in the specification or in any claim. Applicant respectfully traverses this rejection for at least the reason that the specification in fact does support these claims.

Applicant directs the Examiner’s attention to an embodiment shown in Figure 6, which depicts exactly two damping apertures 56. Thus, claim 41 is enabled by the specification. *See, e.g.*, p. 11, ll. 11-12 (“The positioning of the backplate 10 against the damping frame 50 defines two damping apertures 56.”). Regarding claim 43, the specification describes four damping slits in an embodiment. *See, e.g.*, p. 7, ll. 21-23 (“In one embodiment, for example, one damping slit 32 is formed along each inner edge of the damping frame 8 for a total of four damping slits.”). Thus, claim 43 is enabled by the specification. For at least the foregoing reasons, Applicant submits that claims 41 and 43 comply with 35 U.S.C. § 112, ¶ 1.

### Claim Rejections – 35 U.S.C. § 102

The Examiner rejected Claim 38 under 35 U.S.C. § 102 over U.S. Patent No. 4,764,690 (Murphy). Claim 38 has been amended, and is believed to be allowable. Murphy does not disclose an aperture having a distal end and a proximate end, the distal end of the aperture being adjacent a second sound chamber and bounded at least partially by a backplate, the proximate end being adjacent a third sound chamber and bounded at least partially by a structure other than the backplate. The holes 44 shown in FIG. 2 of Murphy do not have a distal end adjacent a second sound chamber and bounded at least partially by a backplate and a proximate end adjacent a third sound chamber and bounded at least partially by a structure other than the backplate. On

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the contrary, both distal and proximate ends of the holes 44 shown in FIG. 2 are bounded completely by the backplate 24. For at least the foregoing reason, claim 38 is believed to be patentable over Murphy.

Claims 39-47 and new claims 53-74, which depend from claim 38, are believed to be patentable over Murphy for at least the reason that claim 38 is patentable thereover. Accordingly, claims 39-47 and new claims 53-74 are believed to be in condition for allowance.

Regarding claims 40, 41, and 43, they are believed to be patentable over Murphy for at least the additional reason that Murphy does not disclose exactly one, exactly two, or exactly four apertures.

#### **Claim Rejection – 35 U.S.C. § 103**

Claim 44 was rejected under 35 U.S.C. § 103 as being unpatentable over Murphy in view of U.S. Patent No. 3,013,127 (Christensen). Applicant respectfully traverses this rejection. Claim 38 includes the limitation that the aperture has “selected dimensional characteristics for dampening a frequency response curve for said microphone.” Thus, the claimed dimension of the aperture in claim 44 is directed to dampening a frequency response curve for a microphone. Such is not taught or suggested in Christensen. In fact, Christensen teaches away from this concept at column 3, lines 48-53 (emphasis added): “By employing conventional damping techniques, such as utilizing damping fabrics, the undesirable peak of response 40 may be reduced somewhat but not to the extent required to provide a relatively flat response without causing the high frequency components to be attenuated unnecessarily.” Because Christensen does not teach the concept of utilizing (or dimensioning) an aperture for dampening a frequency response curve of a microphone, claim 44 is believed to be patentable over Murphy in view of Christensen for at least this additional reason.

Claim 47 was rejected under 35 U.S.C. § 103 as being unpatentable over Murphy. Applicant respectfully traverses this rejection. Claim 38 includes the limitation that the aperture has “selected dimensional characteristics for dampening a frequency response curve for said microphone.” Claim 47 recites that the dampening reduces the frequency response curve at a range of about 2 kHz to about 10 kHz. The claimed aperture is dimensioned to dampen a frequency response curve at a specific range. This concept is not taught or suggested anywhere



in Murphy. Accordingly, claim 47 is believed to be patentable over Murphy for at least this additional reason.

**New Method Claims 79-80**

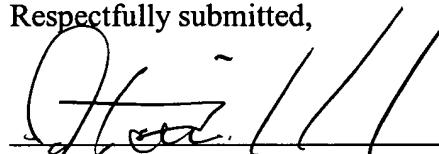
New method claims 79 and 80 have been added, do not add new matter, are not believed to be distinct from claim 38, and are patentable over the references cited. Thus, Applicant submits that claims 79 and 80 are in condition for allowance, and action toward that end is requested.

**Conclusion**

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

A check is enclosed for \$950.00 to cover the fee for the Petition for Three-Month Extension of Time. The Commissioner is authorized to deduct any additional fees required (except for payment of the issue fee) from or to credit any overpayment to Jenkens & Gilchrist, P.C. Deposit Account No. 10-0447, Order No. 47161-000026USPT.

Respectfully submitted,

  
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